

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**FILED
CLERK**

4:29 pm, Sep 28, 2021

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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JAMES JACOBS,

ORDER
16-CV-1242(GRB)(JMW)

-against-

DETECTIVE DARRYL AIKEN, et al.,

Defendant.

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GARY R. BROWN, United States District Judge:

Before the Court is the meticulously detailed, 14-page Report and Recommendation (“R&R”) of U.S. Magistrate Judge James M. Wicks recommending that summary judgment be entered in favor of defendant. Familiarity with Judge Wicks’s fine decision is assumed.

In reviewing a Report and Recommendation, the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where, as here, no objections are filed, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still

excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’”) (*quoting Thomas*, 474 U.S. at 155)). Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, given plaintiff’s *pro se* status, the Court has conducted a *de novo* review of the R&R in an abundance of caution.

The Court hereby fully adopts the R&R, the motion for summary judgment is granted, and the Clerk will enter judgment and close the case.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

Dated: Central Islip, New York
September 28, 2021

/s/ Gary R. Brown
GARY R. BROWN
United States District Judge